



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 29, 2022

IN THE MATTER OF:

Appeal Board No. 625532

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination, holding the claimant eligible to receive \$182.00 per week in Pandemic Unemployment Assistance (PUA) benefits effective March 23, 2020. The claimant requested a hearing seeking a higher benefit rate.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed August 15, 2022 (), the Administrative Law Judge granted the claimant's application to reopen 021-52761, and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for PUA benefits on April 13, 2020, with his claim being made effective March 23, 2020. The claimant was granted PUA benefits of \$182 per week based on claimant's self-employment as a taxi and limousine driver. On line 31 of the 2019 federal self-employment tax return, Schedule C (Profit or Loss from Business), the claimant's net profit lists \$7,881.00 from his business. The claimant also worked as a clothing salesperson and earned \$4,699.96 in W-2 wages solely in the third quarter of 2019. He had no other employment or self-employment during the relevant period.

OPINION: Pursuant to § 2102 (d) of the Coronavirus Aid, Relief and Economic

Security (CARES) Act, the weekly benefit rate for claimants receiving Pandemic Unemployment Assistance (PUA) benefits is determined in accordance with the New York Labor Law § 590 (5) and § 625.6 of Title 20 of the Code of Federal

Regulations (CFR), and the minimum weekly benefit rate cannot be less than the minimum amount established by the US Department of Labor pursuant to § 625.6

(b) of Title 20 of the Code of Federal Regulations.

Pursuant to 20 CFR § 625.6 (a)(2), the net income reported on the claimant's

tax return from self-employment is the amount used to establish a claim for PUA. UIPL 16-20, Change 2, states the claimant's gross income cannot be used to establish a higher benefit rate. UIPL 16-20, Change 1, indicates that if the individual has base period wages that are insufficient to establish a state unemployment insurance claim, the individual will receive the minimum weekly benefit amount of \$182.00. To calculate the weekly benefit rate for a self-employed claimant, the Department of Labor divides the claimant's annual net income by four to determine the quarterly wage.

Pursuant to Labor Law § 590 (5), a claimant's weekly benefit amount then shall

be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, provided the claimant has remuneration in all four calendar quarters during the base period. For claimants paid remuneration in all four calendar quarters during the base period whose high calendar quarter remuneration during the base period is \$3,575 or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers. For claimants paid remuneration in two or three calendar quarters during the base period, the weekly benefit shall be one twenty-sixth of the average remuneration paid in the two highest quarters paid during the base period, provided that a claimant whose high calendar quarter is \$4,000 or less but greater than \$3,575 shall have a weekly benefit amount of one twenty-sixth of such high calendar quarter. For claimants paid remuneration in two or three calendar quarters during the base period and whose high calendar quarter remuneration during the base period is \$3,575 or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest quarter

of the base period.

As the claimant filed his claim in 2020, the base period applicable to claimant's PUA claim was the 2019 calendar year (See U.S. Department of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1, Attachment 1, §

12). The claimant's 2019 net earnings from self-employment were \$7,881.00, or \$1,970.25 per quarter (\$7,881.00 divided by 4). The claimant also had net earnings from W-2 employment of \$4,699.95 in his third quarter of 2019. In Appeal Board Nos. 624844A and 615899, we recognized that the U.S. Department of Labor has directed that, in calculating PUA benefit rates, states must treat employment wages and self-employment income the same as they treat earnings from covered employment. (See U.S. Department of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1, Attachment 1, § 13). Under Labor

Law § 590 (5), a claimant's benefit rate is calculated as one twenty-sixth of

the claimant's high calendar quarter earnings, rounded down to the nearest whole dollar. In the case at hand, the claimant's high quarter earnings fall in the third quarter of 2019, namely, \$6,670.20 (\$1,970.25 + \$4,699.95), which divided by 26 and rounded down to the nearest whole dollar, provides the weekly benefit rate of \$256.00. (See Appeal Board No. 619188.). Accordingly, we conclude that the claimant's PUA benefit rate is \$256.00

We are not persuaded by claimant's contention that his gross income should be used to calculate his benefit rate, as this is contrary to the law. We are also not persuaded by his contention that his net income from self-employment should be higher based on additional cash earnings that were not accounted for due to the pandemic. Here, the claimant is bound by his reported taxable net earnings.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is modified as follows and, as so modified, is affirmed.

The initial determination, holding the claimant eligible to receive \$182.00 per week in Pandemic Unemployment Assistance (PUA) benefits effective March 23, 2020, is modified to \$256.00 per week, and as so modified, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER